Supreme Court, U. S.
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No. 71-6202

In the Supreme Court of the United States

OCTOBER TERM, 1971

CHARLES R. ARMSTRONG, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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1. On July 17, 1964, petitioner, an architectural engineer, was discharged from his employment in the Veterans Administration for inefficiency. The discharge was reviewed and upheld by the Civil Service Commission Appeals Examining Office and then by the Board of Appeals and Review. Thereafter, petitioner filed suit in the Court of Claims, contending that his dismissal was in violation of Veterans Administration procedures. On the undisputed facts, the court found no basis for petitioner's claims and dismissed his petition on January 24, 1969, and this Court denied certiorari. *Armstrong* v. *United States*, 405 F. 2d 1275, certiorari denied, 395 U.S. 934.

Petitioner then filed this independent action in the Court of Claims, seeking relief from its prior judg-

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ment. Concluding that petitioner had not properly alleged or raised any triable issue of fraud, the court dismissed the suit (Pet. 2).

2. The question whether petitioner's complaint seeking relief from the prior judgment against him sufficiently raised a triable issue of fraud does not warrant review by this Court. In any event, the court below properly dismissed the complaint, since the complaint contained only the bare allegation that the government had "performed an act of fraud upon the Court of Claims" to obtain the original judgment against petitioner (Pet. App. 3b). Nor did the affidavit (Pet. App. 3c–5c) attached to petitioner's opposition to the government's motion to dismiss provide the needed specificity, since it merely referred to the allegations in the complaint (see Pet. App. 5c). Under Rule 33(b) of the Court of Claims Rules, allegations of fraud must be pleaded with particularity.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1972.

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